IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1131 of 1999

in

SPECIAL CIVIL APPLICATIONNo 2212 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURUBHAI GOVUBHA JADEJA

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Appellant

NOTICE SERVED BY DS for Respondent No. 1

MR BHARAT T RAO for Respondent No. 4

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE J.N.BHATT

Date of decision: 31/08/1999

ORAL JUDGEMENT(per: J.N. Bhatt, J)

By this L.P.A., the appellant-original petitioner has assailed the judgment dtd.26.7.99, recorded by the Learned Single Judge, in Spl.C.A.No.2212/99, whereby, the petition of the original petitioner under Art. 226 of the Constitution of India challenging the detention order dtd. 6.3.99, came to be dismissed.

2. The appellant original petitioner was detained by the order of Preventive Detention passed on 6th March 1999 by the State Government, under Sec. 3 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 ("Act" for short).

3. The appellant, herein, was a manager in Jay Ambe Petroleum Services, situated, at Kalol, Dist. Mehsana and upon the inspection, the stock of the diesel maintained by the patrol pump was noticed to be adulterated, which upon analysis was found to be adulterated by the Control Kerosene which was supposed to be distributed to the domestic users at the concessional or subsidised price. It was alleged that the appellant being the Manager was also accountable for the illegal activities alleged to have been committed by the owner of the said petrol pump for pecuniary and personal gain.

4. The impugned order of the detention was challenged on various grounds by the petitioner which was vehemently contested by the Respondent Authority in the aforesaid writ petition, which upon hearing, came to be dismissed by the Learned Single Judge. Hence, this L.P.A. at the instance of the Original Petitioner Manager of the Patrol Pump.

5. The Learned Advocate appearing for the appellant has raised various contentions before us which are in reality, the reiteration of the same grounds raised before the Learned Single Judge. The Learned AGP has contested the submission raised on behalf of the appellant before us.

6. One of the main contentions raised against the impugned order of the Authority and the impugned judgment of the Learned Single Judge, is with regards to the delay in considering the representation of the appellant detenu made to the Central Government. It was contended that the Learned Single Judge has committed serious error in dealing with the submission as to delay in deciding the representation by the Central Government in that it was therefore, contended that such representation made to the Central Government had not been expeditiously dealt with

and unexplained delay in dealing with such representation has resulted into violation of mandatory provisions and therefore, the impugned detention order has been vitiated and continued detention of the appellant original petition is unauthorised and illegal.

7. After having heard, considering the relevant legal proposition and the factual scenario emerging from the record of the present case we are of the opinion that this aspects and the submission with regards to the late disposal of the representation without proper explanation strike at the root of the matter and it vitiate the impugned preventive detention order.

8. The following facts have remained unquestionable and uncontrovertible which need to be highlighted in order to appreciate the aforesaid main contention;

i) The order of preventive detention was passed on 6.3.99.

ii) The appellant had made a representation on 13.3.99, which came to be received by the respondent Central Government on 15.3.99.

iii) The Central Government called for parawise remarks by telegram on 16.3.99.

iv) A copy of the representation addressed to the State Government was also sent to the Central Government by the State Government on 18.3.99, along with the parawise remarks as per the affidiavit-in-reply filed by the Respondent Authority.

v) The copy of the same representation was received by the Central Government on 22.3.99 through State Government with the letter dtd. 18.3.99

vi) It is evident from the affidavit of the State Government and the Central Government that the representation which was addressed to the State Government was also sent to the Central Government by the State Government together with the parawise remarks on 18.3.99 which came to be received by the Central Government on 22.3.99.

vii) The representation came to be decided on Ist April 1999.

viii) It is very clear that the representation was made on behalf of the petitioner on 13th March 1999 and was as such sent to both the Central Government as well as to the State Government. The Central Government had

received the said representation on 15th march 1999 and called for opinion of the State Government on 16th March 1999. The impugned order states that it was sent by the State Government on 18th March 1999 and was received by the Central Government on 22nd March 1999 and that the para wise remarks sent by the State Government came to be received by the Concerned Department on 26th March 1999 there were 3 intervining holidays and the representation was attended to 30th and 31st March 1999 and was rejected on 1st April 1999.

9. The Contention that if the representation along with the parawise remarks sent by the State Government which was received on 22nd March 1999, there was no reason why the concerned authority should have then waited for another set of parawise remarks and should not have dealt with the representation soon after 22nd March 1999 is erroneously rejected by the Learned Single Judge. It is also observed in the impugned judgment that the affidavit made on behalf of the Union Government is not clearly worded. Notwithstanding that the learned Single Judge observed that the representation sent through the State Government and the parawise remarks sent by the State Government had been received by the concerned department on 26th march 1999. It was therefore, found by the Learned Single Judge that, the concerned officer could not have attended too, the matter before 26th March 1999. In our opinion, the findings recorded by the Learned Single Judge on this score with due respect, is tainted with misconception and fallacy.

10. Upon the correct perusal and appraisal of the factual scenario emerging from the affidavit of the Respondent Authority, it is quite evident that the representation which was addressed to the State Government was sent to the Central Government by the State Government together with the parawise remarks on 18.3.99 had been received by the Central Government on 22.3.99. There is no dispute about the facts that the representation was the same and identical. it was therefore, incumbent upon the Central Government to decide this representation without loss of time and delay as a matter of facts, the representation came to be decided on 1st April 1999. therefore, in our opinion, there was unexplained and unaccountable delay of 9 days in deciding the representation of the appellant. This aspect has not been examined and appreciated by the Learned Single Judge in its correct factual and legal perspectives. The views and the perception deduced from the fact are incorrect and full of fallacy.

11. The Art. 22 of the Constitution of India prescribes the significant safe guard against the arrest and detention in certain cases. Clause-5 of the Art. 22 of the Constitution is very important and relevant which prescribes the statutory Constitutional protections to the detinue. When any person detained pursuant to the order made under any law providing for preventive detention, the authority making order shall very soon may be communicated such person the ground on which order has been made and shall afford him the earliest opportunity of making a representation against the order. It becomes, therefore, clear that by Art. 22(5) of the Constitutional mandate that the Government must consider the representation, as soon as, it is received.

12. Preventive detention means, detention of a person without trial. The detenu has right to make representation and it is the obligation of the appropriate Government to consider the detenue's representation without any delay on the part of the Government to consider the representation as to whether it renderes detention illegal. It cannot be gain said that right to representation under Art. 22 (5) of the Constitution, includes right to expedite the disposal by the State Government and Central Government expeditiously as a rule and delay defeating the mandate of Art. 22(5) of the Constitution when it has remained unaccounted and unexplained.

13. It is an obligation of the Government under Art. 22(5) to consider the representation (since it is received by it) for the simple reason it that affects the life and liberty of the citizen. Of course, it cannot be based laying done any hard and fast rule as to the measures of time by the appropriate authority for such consideration. It has been a clear exposition of law. In view of safeguards contained in Art. 22(5), representation submitted by the detenu out to be disposed of with a sense of urgency without any avoidable delay and the government is bound to honour the constitutional safe guard and to consider the representation as soon as received, in case of any delay on the part of the Government to consider the representation, it is to be accounted for and failing which detention shall stands vitiated. Once the detenu take such plea it is for the state to offer the explanation for delay and it is for the state to satisfy conscience of the Court that the Authority concerned has considered the representation at the earliest opportunity without inordinate or undue delay with an explanation and any undue delay on the part

of the Government would render the order of detention invalid and illegal.

14. In light of the aforesaid admitted facts emerging from the respective affidavits-in-reply filed by the Respondent Authorities that there was delay of 9 days and delay has not been adequately, sufficiently and appropriately explained and accounted for by the Respondent Authority. Unexplained and unaccounted for delay in disposal of the representation obviously, would entail quashing of preventive detention being in violation of mandatory rights of the detenu and the obligation on the part of the detaining authority. No explanation has been tendered as to why from 22nd March 1999 the Central Government which has already received the representation with parawise remarks remained unattended till date of disposal of the representation like on 1.4.99.

15. In our opinion, this ground `ifso facto' is found vetripotant to quash and set aside the order of the preventive detention against the appellant detenu and impugned judgment of the Learned Single Judge which accordingly shall stand quashed as the preventive detention order dtd. 6.3.99 is found to be illegal and invalid. The appeal is accordingly allowed. Detenu shall be released from the detention forthwith, if not required in any other case. Rule is made absolute to that extent.

In view of the order passed in L.P.A., no order in C.A.

D.S.

sanjay.